



FISCAL MEMORANDUM

HB 474 - SB 435

February 15, 2022

SUMMARY OF BILL AS AMENDED (005530, 013756): Revises the offense of indecent exposure. Enhances the penalty for indecent exposure in instances where the defendant is over the age of 18 and the victim is under the age of 15 to a Class E felony. Expands the offense of indecent exposure to include a Class E felony offense of a defendant 18 years or older intentionally engaging in the exposure of a person's genitals, buttocks, or female breasts or masturbation in the intended presence of another within a residence for the purpose of attaining sexual arousal or gratification. Enhances the penalty for indecent exposure in instances where the defendant is over the age of 18 with two of any of the outlined convictions and the victim is under the age of 13 to a Class C felony.

FISCAL IMPACT OF BILL AS AMENDED:

Increase State Expenditures – \$340,900 Incarceration

Decrease Local Expenditures – \$12,600/FY22-23 and Subsequent Years

Assumptions for the bill as amended:

Indecent Exposure Misdemeanor Enhancements

- Pursuant to Tenn. Code Ann. § 39-13-511(b)(2), indecent exposure in instances where the defendant is over the age of 18 and the victim is under the age of 13 is a Class A misdemeanor offense.
- Based on information provided by the Administrative Office of the Courts (AOC), there has been an average of five Class A misdemeanor convictions of indecent exposure each year over the last five years. This analysis assumes that only 10 percent of misdemeanor convictions are at the state court level. As a result, it is estimated that there is a total of 50 convictions ($5 / 10\% = 50$) per year for Class A misdemeanor indecent exposure.
- The proposed legislation will result in 25 percent, or 13 ($50 \times 25\%$), of such convictions being enhanced to Class E felony admissions.
- The average time served for a Class E felony is 0.66 years.
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.74 percent per year for each of the past 10 years (from 2010 to 2020).
- The weighted average operational costs per day are estimated to be \$51.36 for inmates housed at state facilities and \$48.77 for inmates housed at local facilities.
- The estimated increase in incarceration costs are estimated to be the following over the next ten-year period:

Increase in State Expenditures	
Amount	Fiscal Year
\$ 156,300	FY22-23
\$ 157,500	FY23-24
\$ 158,700	FY24-25
\$ 159,900	FY25-26
\$ 161,100	FY26-27
\$ 162,300	FY27-28
\$ 163,500	FY28-29
\$ 164,700	FY29-30
\$ 165,900	FY30-31
\$ 167,100	FY31-32

- Pursuant to Tenn. Code Ann. § 9-4-210, recurring costs increases are to be estimated on the highest of the next ten fiscal years; therefore, the recurring increase in incarceration costs will be \$167,100.
- This analysis assumes individuals convicted of a Class A misdemeanor offense of indecent exposure are spending an average of 15 days in local jail.
- Based on cost estimates provided by local government entities throughout the state and reported bed capacity within such facilities, the weighted average cost per day to house an inmate in a local jail facility is \$60.69.
- The proposed legislation will result in a recurring decrease in local incarceration expenditures estimated to be \$11,835 (13 offenders x \$60.69 x 15 days) in FY22-23 and subsequent years.
- Pursuant to Tenn. Code Ann. § 39-13-511(b)(1), indecent exposure is a Class B misdemeanor offense, unless the victim is under a certain age or a guard or staff member of a penal institution.
- Based on information provided by the AOC, there has been an average of 24.8 Class B misdemeanor convictions of indecent exposure each year over the last five years. This analysis assumes that only 10 percent of misdemeanor convictions are at the state court level. As a result, it is estimated that there is a total of 248 convictions (24.8 / 10%) per year for Class B misdemeanor indecent exposure.
- The proposed legislation will result in five percent, or 12.4 (248 x 5%), of such convictions being enhanced to Class E felony admissions.
- The estimated increase in incarceration costs are estimated to be the following over the next ten-year period:

Increase in State Expenditures	
Amount	Fiscal Year
\$ 149,100	FY22-23
\$ 150,200	FY23-24
\$ 151,300	FY24-25
\$ 152,400	FY25-26
\$ 153,400	FY26-27
\$ 154,500	FY27-28
\$ 155,600	FY28-29
\$ 156,700	FY29-30
\$ 157,800	FY30-31
\$ 159,000	FY31-32

- Pursuant to Tenn. Code Ann. § 9-4-210, recurring costs increases are to be estimated on the highest of the next ten fiscal years; therefore, the recurring increase in incarceration costs will be \$159,000.
- This analysis assumes individuals convicted of a Class B misdemeanor offense of indecent exposure are spending an average of one day in local jail.
- The proposed legislation will result in a recurring decrease in local incarceration expenditures estimated to be \$753 (12.4 offenders x \$60.69 x 1 day) in FY22-23 and subsequent years.

Indecent Exposure Felony Enhancement

- Pursuant to Tenn. Code Ann. § 39-13-511(b)(3) indecent exposure in instances where the defendant is over the age of 18 with two of any of the outlined convictions and the victim is under the age of 13 is a Class E felony offense.
- Based on information provided by the Department of Correction, there has been an average of one admission for indecent exposure with two or more prior convictions each year over the past five years.
- The average time served for a Class C felony is 1.59 years. The average time served for a Class E felony is 0.66 years.
- Accounting for recidivism rates, the proposed legislation will result in 0.68 admissions serving an additional 0.93 years (1.59 – 0.66).
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.74 percent per year for each of the past 10 years (from 2010 to 2020).
- The weighted average operational costs per day are estimated to be \$51.36 for inmates housed at state facilities and \$48.77 for inmates housed at local facilities.
- The increase in incarceration costs are estimated to be the following over the next ten-year period:

Increase in State Expenditures	
Amount	Fiscal Year
\$ 7,300	FY22-23
\$ 14,800	FY23-24
\$ 14,700	FY24-25
\$ 14,800	FY25-26
\$ 14,800	FY26-27
\$ 14,800	FY27-28
\$ 14,700	FY28-29
\$ 14,800	FY29-30
\$ 14,800	FY30-31
\$ 14,800	FY31-32

- Pursuant to Tenn. Code Ann. § 9-4-210, recurring cost increases are to be estimated on the highest of the next ten fiscal years; therefore, the recurring increase in incarceration costs will be \$14,800.

Total Incarceration Impact

- The total recurring increase in incarceration expenditures is estimated to be \$340,900 (\$167,100 + \$159,000 + \$14,800).
- The total recurring decrease in local incarceration expenditures is estimated to be \$12,600 (\$11,835 + \$753) in FY22-23 and subsequent years.
- Based on the Fiscal Review Committee's 2008 study and the Administrative Office of the Courts' 2012 study on collection of court costs, fees, and fines, collection in criminal cases is insignificant. The proposed legislation will not significantly change state or local revenue.
- The estimated fiscal impact of the proposed legislation does not consider the availability of beds in state and local facilities, but is based solely on the current operating costs of state facilities and the reimbursement rates for local facilities as is required by Tenn. Code Ann. § 9-4-210.
- All calculations used in completion of this fiscal memorandum are available upon request.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

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